IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2840 of 1991

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DOULATRAI PREMSHANKAR BHATT

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioner No. 1

MS KATHA GAJJAR, AGP for Respondent Nos. 1-3

Respondent No. 4 served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/02/2002

ORAL JUDGEMENT

#. Heard the learned advocates.

#. In the year 1968, the petitioner was granted land Survey No.174 paiki admeasuring 20-Acres of Village Sarmat, District Jamnagar for a specific purpose of raising Coconut plantation. Revenue Entry No.350 with respect to the said grant was made in the village records and was certified on 17th December, 1968. Since then, on 30th June, 1981, the petitioner appears to have purchased agricultural land bearing Survey No.50/1 paiki admeasuring 7-Acres and 4-Gunthas of Village Vasai, District Jamnagar from the respondent no.4 herein. The said transfer was registered in the village records under Revenue Entry No.799. The said entry was certified on 15th December, 1982. In the year 1988, the petitioner applied for permission for Non-Agricultural use (Industrial use) of the said land Survey No.50/1 paiki of Village Vasai to the District Panchayat, Jamnagar. Such permission was granted by the District Panchayat, Jamnagar on 20th February, 1988 in respect of the land admeasuring 2-Acres and 8-Gunthas. After obtaining such permission, the petitioner had sold some 8903 Sq.Meters of the said land to one M/s. Patiala Chemicals Industries and had also handed over the possession of the said land.

#. On 14th August, 1989, seven years after the date of the said entry, the Assistant Collector, Jamnagar, in exercise of power conferred under Rule 108 of the Bombay Land Revenue Rules (hereinafter referred to as 'the Rules') and under Section 54 of the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Lands Ordinance, 1949 (hereinafter referred to as 'the Ordinance'), took the above referred Revenue Entry No.799 of Village Vasai in Revision. The Assistant Collector was of the opinion that on the date of the purchase i.e. in the year 1982, the petitioner was not an agriculturist within the meaning of the Ordinance. The transfer in favour of the petitioner was in contravention of Section 54 of the Ordinance and was null and void. The notice was contested by the petitioner. The petitioner claimed that in view of the grant of land at Village Sarmat and the Coconut plantation raised by him, the petitioner became an agriculturist. Hence, on the date of purchase of the land at Village Vasai, the petitioner was an agriculturist within the meaning of the Ordinance. The purchase made by him is, therefore, legal and valid. The petitioner also contested on the ground of gross delay in

initiating the action and the fact that the part of the said land was already transferred to the third party. The Assistant Collector, Jamnagar was, under his order dated 18th September, 1989, pleased to hold that raising of Coconut plantation can not be said to be an agricultural operation. The petitioner was, therefore, not an agriculturist and the transfer made in his favour was null and void. The said order was confirmed by the District Collector, Jamnagar under his order dated 26th May, 1990 made in Appeal No.6/90. Feeling aggrieved, the petitioner preferred Revision Application No.2 of 1990 before the State Government. The State Government (Additional Chief Secretary - Appeals, Revenue Department), under its order dated 11th December, 1990, confirmed the finding of the authorities below that on the date of the transfer of land at Village Vasai the petitioner was not an agriculturist. The State Government was further pleased to hold that the grant of land to the petitioner made in the year 1968 for the purpose of raising Coconut plantation was contrary to the prevailing Government instructions and was bad. The Revision Application was, therefore, dismissed. Feeling aggrieved, the petitioner has preferred the present petition.

#. It is an admitted fact that the petitioner was granted land at Village Sarmat in the year 1968 for raising Coconut plantation. It is not disputed that the said land at Village Sarmat has been utilized by the petitioner for the purpose for which it was granted i.e. for raising Coconut plantation. It is also not disputed that on the date the petitioner purchased the land at Village Vasai, the petitioner was holding the said land at Village Sarmat and had also raised Coconut plantation on the said land. The question, therefore, shall be whether the raising of Coconut plantation can be said to be an agricultural activity which would render the petitioner an agriculturist within the meaning of the Ordinance. The provisions of the Ordinance as are relevant to the present case read as under :

2(b) "agriculture" includes horticulture, raising of crops fodder or garden produce, dairy farming, poultry farming, stock breeding and grazing, but does not include cutting of wood only.

2(c) "agriculturist" means a person who cultivates the land personally.

2(f) "to cultivate" means to carry on any

agricultural operation.

2(g) "to cultivate personally" means to cultivate on one's own account -

(1) by one's own labour, or

(2) by the labour of any member of one's family, or

(3) by servants on wages payable in cash or kind, but not in crop-shares or by hired labour, under one's personal supervision or of any member of one's family.

"Section 54. Transfer to non-agriculturists barred.-- (1) Save as provided in this Ordinance,

(a) no sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land where lease is by law allowed or interest therein, or

(b) no mortgage of any land or interest therein in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person who is not an agriculturist: or

(c) No agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein

Provided that the Collector or an officer authorised by the Government may grant permission for such sale, gift, exchange, lease, where lease is by law allowed, or mortgage or for such agreement, on such conditions as may be prescribed :

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees.

(2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan.

Explanation. - For the purpose of this section in so far as it relates to sale or lease of land, the term "agriculturist" shall include a Maldhari and Landless Labourers employed in agricultural operations."

#. Learned advocate Mr.Nanavati appearing for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the matter of COMMISSIONER OF INCOME-TAX WEST BENGAL, CALCUTTA v. BENOY KUMAR SAHAS ROY [AIR 1957 S.C. 768] and of this Court in the matter of MANGALBHAI B. PRAJAPATI v. STATE OF GUJARAT & ORS. [2001(1) GLR 242]. In Re. Benoy Kumar (Supra), question was whether a particular income was agricultural income as envisaged in the Income-Tax Act, 1922. The Hon'ble Court found that the definition of "agriculture" or "agricultural purpose" was not found in the Act. The Court held that, "the terms 'agriculture' and 'agricultural purpose', not having been defined in the Indian Income-Tax Act, we must necessarily fall back upon the general sense in which they have been understood in common parlance. "Agriculture" in its root sense means ager a field and cultura-cultivation, cultivation of field which of course implies expenditure of human skill and labour upon land. The term has, however, acquired a wider signifance and that is to be found in the various dictionary meanings ascribed to it."

After considering the meaning attributed to the word "agriculture" in several dictionaries, the Hon'ble Court has quoted the judgment of the Madras High Court in the matter of MURUGESA CHETTI v. CHINNATHAMBI GOUNDAN [I.L.R. 24 MADRAS 421] with approval. The quote reads as under :

"The primary meaning of agriculture is the cultivation of the ground (The Century Dictionary) and in its general sense, it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock (Anderson's Dictionary of Law). Its less general and more ordinary signification is the cultivation with the plough and in large areas in order to raise food for man and beast (The Century Dictionary) or, in other words, "that species of cultivation which is intended to raise grain and other field crops for man and beast." (Anderson's Dictionary of Law). Horticulture,

which denotes the cultivation of garden or orchards, is a species of agriculture in its primary and more general sense."

The Hon'ble Court has also considered several judgments and observed that, "these are the various meanings ascribed to the term "agriculture" in various dictionaries and it is significant to note that the term has been used both in the narrow sense of the cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese-making, husbandry etc."

#. In view of the above observations, it is evident that the word "agriculture" when construed in its general sense has been given a broad meaning which includes activities which are not strictly speaking agriculture i.e. tilling the land and raising of crops. In other words, in the broad sense of the word, the horticulture, dairy farming, breeding and rearing of livestock, forestry also are understood as agriculture. In the present case, the definition of the word "agriculture" under Section 2(b) of the Ordinance is quite wide and includes dairy farming, paultry farming, stock breeding and grazing also. The legislative intent not to confine the meaning of the word "agriculture" in its narrow sense is thus clear. Hence, the word "agriculture" as it occurs in the Ordinance is required to be given its broad meaning as understood in the general sense, more particularly, the definition that occurs in Section 2(b) is inclusive and not exhaustive. That also indicates that the activities related to the agriculture are also deemed to be agriculture for the purposes of the Ordinance. In the present case, horticulture is specifically included in the definition of the word "agriculture". The horticulture, therefore, is necessarily an agriculture for the purposes of the Ordinance.

The word "horticulture" is not defined in the Ordinance. The said word should, therefore, be given its ordinary dictionary meaning. The meaning appears in the Concise Oxford Dictionary (Ninth Edition) as "the art of garden cultivation". The word "garden" (according to the said Dictionary) means, "a piece of ground, usually partly grassed and adjoining a private house, used for growing flowers, fruits, or vegetables, and as a place of recreation". The word "horticulture" (according to the Oxford English Dictionary (Vol.V) means "the cultivation

of a garden; the art or science of cultivating or managing gardens, including the growing of flowers, fruits, and vegetables".

#. In above view of the matter, I am of the opinion that raising of fruit bearing trees (Coconut trees in the present case) is an agricultural operation. The petitioner, therefore, can safely be said to be an agriculturist within the meaning of Section 2(c) of the Ordinance. If, the petitioner were agriculturist since the year 1968, the bar under Section 54 of the Ordinance would not be attracted. The petitioner's purchase of the agricultural land of Village Vasai in the year 1981 or there about, therefore, would not be barred by Section 54 of the Ordinance, nor would such transfer be invalid as envisaged in the said Section.

#. The learned AGP Ms.Katha Gajjar has submitted that the raising of Coconut plantation has been specifically excluded from the agricultural operation. However, the contention is not made good.

#. Since I have taken the view that on the date of purchase of land at Village Vasai the petitioner was an agriculturist, the transfer made in his favour would not be barred by Section 54 of the Ordinance. The orders made by the authorities below, therefore, shall not be sustainable. As the petition deserves to be allowed on this point alone, I do not deal with the contention of delay and latches/belated action raised by Mr.Nanavati.

#. In view of the above discussion, the petition is allowed. The order made by the authority below on 11th December, 1990 is quashed and set aside. Rule is made absolute. There shall be no order as to cost.

7th February, 2002. (Ms. R.M.Doshit, J.)

/sakkaf